

MR. AND MRS. EDWARD LEVANDOSKI

JULY 1, 1952.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MILLER of New York, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5485]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5485) for the relief of Mr. and Mrs. Edward Levandoski, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay the sum of \$15,000 to Mr. and Mrs. Edward Levandoski, of Dunkirk, N. Y., in full settlement of all their claims against the United States arising out of the death of their minor daughter, Jean, which occurred on June 11, 1951, when she fell over a cliff while running along an unprotected and badly eroded path on Coast Guard property adjacent to Point Gratiot Park, a public park and playground in Dunkirk, N. Y.

STATEMENT OF FACTS

It appears that the plot of land on which the accident occurred was owned by the Government and governed by the Coast Guard. It was unfenced; it was near a public park where thousands of children played each week. Hundreds of children each week scampered around the Coast Guard property. There were no signs of warning on this property. Along the lake edge were bushes and foliage and a path extending from the lighthouse dwelling to a road which has been abandoned for some time. The lakeside is comprised of these hedges and precipitous cliffs about 40 feet in height that reach the water in a straight vertical line.

At the time of the accident there were about 60 children on the place during that day up to the time of the accident which was about 1:30 or 2 o'clock in the afternoon.

Jean Levandoski, a bright, normal, healthy youngster, was following Mary King along the path mentioned. At one point a notch in the cliffs cut the path and was covered by foliage and grass. Her foot evidently went into this notch and she was hurled over the precipitous side into the water below and was found in the water directly off of this point about 15 feet about an hour and a half later. She was dead and the coroner said it was due to either drowning or a fractured skull, or both.

Jean, in all her school work, maintained an average above 90 percent.

This Coast Guard property is directly adjacent to a public park equipped with picnic tables, children's playground, fireplaces, bathing beaches and a tennis court, and formerly was a camp site used by tens of thousands each summer, among which were thousands of children. Yet the treacherous cliffs were not guarded; were not posted and a path was worn by the occupants of the lighthouse, which in itself, was a death trap.

Subsequent to the death of this child, two signs were erected which admit the danger of the situation. One of these signs is placed a few feet from the hole down which the child fell. At the entrance of the roadway running into the park drive is a warning sign. The one at the point where Jean fell says "High Cliff Danger Keep Off", which was installed after this accident. This is an indication to this committee that evidently there was an attractive nuisance, and the committee is of the opinion that the Government is liable for the death of the child. Favorable consideration therefore is recommended to this bill.

STATE OF NEW YORK,

*City of Dunkirk, Chautauqua County, ss:*

Thaddeus C. Kosciuszko, being duly sworn, deposes and says that he is the acting chief of police of the city of Dunkirk, N. Y. and that on the 11th day of June 1951, investigated the death of Jean Levandoski, age 10, who fell over the cliff about 150 to 175 feet northwest of the lighthouse in the city of Dunkirk, and about 275 to 300 feet east of the westerly boundary of the lighthouse property as marked by a fencepost and a sign stating that this was Coast Guard property and this point according to the map also is marked by a concrete monument. That your deponent says that he talked with William R. Gannon, lighthouse keeper in the Government lighthouse, located at what is known as Point Gratiot, and Mr. Gannon, at the time, had some painters at work on the outside and he was supervising their work. He further says that he was the first to be on the scene of the accident and it is marked on his log that the body was recovered at 2:15 p. m. on June 11, 1951, and that the girl could have fallen off the cliff a half hour before and the body was located in the vicinity where it was brought up shortly after she fell over the cliff as it took some time to bring the ladders and to set them over the cliff to enable a man to descend and recover the body from the water and to bring it up to the top of the cliff. The wind at that time, according to Mr. Gannon was 15 miles per hour and was north-northeast and the waves were lapping over the body and pushing it over to the cliffs. Mr. Gannon said there was no use beating around the bush, that this accident happened wholly on Government property and that he would have to say so. He also said there were never any signs upon any of said property warning people about this or any other dangerous location nor any warning that this was Government property and was not to be trespassed upon or anything of that nature since he has been assigned to the position of lighthouse keeper in this area.

I inspected the spot which Mr. Gannon pointed out as the place of the accident on the 13th day of October 1951, and it is here where I first saw the body of Jean Levandoski in the water of Lake Erie on June 11, 1951.

THADDEUS C. KOSCIUSZKO.

Subscribed and sworn to before me this 25 day of October 1951.

EVELYN W. LEDERER,  
Notary Public No. 709.

My Commission expires March 30, 1952.

TREASURY DEPARTMENT,  
OFFICE OF THE SECRETARY,  
Washington, April 8, 1952.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of January 10, 1952, requesting the views of the Treasury Department on H. R. 5485, for the relief of Mr. and Mrs. Edward Levandoski.

The purpose of H. R. 5485 is to authorize and direct the Secretary of the Treasury to pay the sum of \$15,000 to Mr. and Mrs. Levandoski, of Dunkirk, N. Y. in full settlement of all claims against the United States arising out of the death of their minor daughter on June 11, 1951, when she fell over a cliff into the waters of Lake Erie from Coast Guard property at the Dunkirk light station at Dunkirk, N. Y.

On June 28, 1951, a board consisting of one officer of the Coast Guard convened at the Dunkirk light station for the purpose of inquiring into all facts in connection with this tragedy. All witnesses who had any knowledge of the event connected with the accident were heard, with the exception of Mary King the 12-year-old playmate and last companion of the deceased child, who, at the request of her parents, was not required to testify.

This investigation disclosed that the deceased child, age 11, fell over a 40-foot cliff while walking on Coast Guard property near precipitous, rocky 40-foot high bluffs in company with Mary King. When help reached the scene—apparently within 5 minutes of the fall—the body was floating at a point about 20 feet out from the water line.

The Coast Guard property at the light station comprises a point of high land that projects out into the lake in a northerly direction from the general trend of the shore line in that area. It is, roughly speaking, rectangular in shape, about 600 feet in an east-west direction and about 350 feet in a north-south direction. This gives a west shore line, a north shore line, and an east shore line to the property. The child's body was discovered and removed from the water at a point off the west shore line of the reservation about 200 feet north of the spot where the Coast Guard property line intersects the shore line. Clearly, then, the fall occurred from the bluff above on Coast Guard property.

South and west of the reservation is a public park known as Point Gratiot Park. On the day of this tragedy, St. Mary's School of Dunkirk was holding its annual school picnic on the park site. Apparently the deceased child wandered off from the main body of picknickers in company with Mary King onto Coast Guard property along a path that extends parallel to the shore line but is at all points at least 25 feet from the brink of the bluff. Between the path and the bluff are heavy bramble thickets, penetrable only in places where the bramble have not grown together. The child had to leave the path and find her way through the thicket in order to reach the point from which she fell. There is no fence along the bluffs and there were no signs indicating danger.

The pastor of St. Mary's School stated that the church and school has been sponsoring picnics on this ground for 57 years without a single accident until this tragedy. The former keeper of the light station was in residence on the reservation for 43 years and raised a family of six children without such an accident occurring on the bluffs. Long experience, therefore, has failed to indicate a real danger to picnickers who trespassed on Coast Guard property from the park property. In view of the circumstances it seems improper to charge the Government with liability for the regrettable death of Jean Levandoski.

The accident occurred on June 11, 1951, less than 1 year ago. Since the statutory period in which suit must be filed under the Federal Tort Claims Act is 2 years, it would appear appropriate for the claimants to avail themselves of the judicial remedy afforded by that act. To grant relief by private legislation in this case would be discriminatory against other claimants who have been obliged to observe the statutory requirements.

The Treasury Department for the reasons stated recommends against the enactment of H. R. 5485.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the committee.

Very truly yours,

JOHN S. GRAHAM,  
*Acting Secretary of the Treasury*

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OFFICE OF THE  
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